

December 8, 2004

Ex Parte – Via Electronic Filing

Ms. Marlene Dortch
Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, DC 20554

Re: CC Docket No. 01-338 and WC Docket 04-313

Dear Ms. Dortch:

On December 7, 2004, Mike Reith of Z-Tel, and I met with Commissioner Martin and Dan Gonzalez, his Senior Legal Advisor, and later that day I spoke to Jessica Rosenworcel, Commissioner Copps' Competition and Universal Service Legal Advisor. We gave Commissioner Martin and Mr. Gonzalez the November 2, 2004, ex parte letter Z-Tel filed in these dockets and called that ex parte to Ms. Rosenworcel's attention. We noted that Z-Tel has laid off more than 20 percent of its work force in the last few months and has a new CEO. We reiterated, as explained in our letter of November 2, that Z-Tel has continuing concerns about hot cut processes. We also reiterated that Z-Tel will not be able to serve ten of thousands of its existing residential customers if access to unbundled switching at cost-based rates is eliminated.

We emphasized that Z-Tel's ability to transition its customers to its own switches where it has a high concentration of customers requires a long transition period – preferably, three years – and the ability to acquire customers using unbundled switching during the transition. We also noted that even in New York, where Z-Tel has begun the process of deploying a switch, Z-Tel has not been able to obtain transport from central offices in Staten Island to the central office in Manhattan where its switch will be located – undermining the contention that CLECs are not impaired without access to unbundled switching wherever they deploy a switch. Finally, we noted that the Commission should clarify that, to the extent Z-Tel is forced to rely on resale, it should be permitted to resell basic local service and offer its unique advanced features – and should not be required to resell the BOCs' advanced features instead.

Sincerely,

/s/

Christopher J. Wright
Counsel to Z-Tel Communications, Inc.

attachment



November 2, 2004

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington DC 20554

Re: Written *Ex Parte* Presentation
In the Matter of Unbundled Access to Network Elements, WC 04-313, CC 01-338

Dear Ms. Dortch:

I would like to take this opportunity to respond to some of the characterizations other parties have made of Z-Tel Communications, Inc. (Z-Tel) and the services the company provides and intends to provide in the future. While Z-Tel is participating in the remand phase of this proceeding through the PACE Coalition, Z-Tel is compelled to respond directly to allegations made on this record with regard to Z-Tel's individual network deployment and business plans.

Z-Tel is and has been a leading provider of bundled local and long distance services, packaged with innovative calling features including our award-winning Personal Voice Assistant™ suite of features. Z-Tel has been an active participant in the local service market in forty-nine states, serving primarily residential and small business customers, using a combination of the unbundled network element platform (UNE-P) and our own proprietary features. While Z-Tel has begun to deploy facilities in certain markets, it has by no means abandoned its commitment to UNE-P, and will continue to serve customers via UNE-P (or a functional alternative to UNE-P) as long as that option is available at a reasonable price.

Recently, the Regional Bell Operating Companies (RBOCs) have implied in their comments in this proceeding that Z-Tel is exiting the UNE-P market, because it prefers either an unbundled loop (UNE-L) service delivery mechanism or a voice over internet protocol (VoIP) strategy.¹ The RBOCs even claim that Z-Tel's longstanding concerns with the ILECs' hot cut processes have been resolved. Nothing could be further from the truth.²

To support their supposed claims, the RBOCs reference a July 2004 8-K filing Z-Tel made with the Securities and Exchange Commission. Z-Tel's 8-K filing speaks for itself, but it must be read in context in order to have the proper meaning. The RBOCs' attempt to distort the filing's meaning by selectively excerpting from it should not be given any weight.

So that the Commission has as complete and accurate a record as possible when it makes its unbundling determinations in this proceeding, Z-Tel attaches hereto its July 2004 8-K filing, so that the selectively quoted materials can be viewed in their appropriate context.

The Commission should consider Z-Tel's facilities-based offerings in the context of Z-Tel's overall business. Currently, Z-Tel is serving customers using packet technology in only two markets, Tampa and Atlanta. These customers are served at the DS-1 level using EELs purchased from Verizon and BellSouth. Customers served via Z-Tel switches represent a miniscule percentage of Z-Tel's total customer base, and will for the foreseeable future.

¹ SBC Initial Comments at 2, 47, 50. Verizon Initial Comments at 108, 112. Qwest Initial Comment at 45.

² SBC Initial Comments at 2.

November 2, 2004

Using UNE-P, Z-Tel has been able to market attractive products to customers on a statewide basis, with only minor differences in price for those states with unusually high zone 3 loop rates. The availability of UNE-P has allowed Z-Tel to offer a service ubiquity that no facilities-based carrier could match. In addition to residential and traditional small businesses, larger business customers with a nationwide footprint but only a small number of lines in any one location are able to aggregate their accounts and purchase a single suite of services from Z-Tel. As a result, Z-Tel's current customer base is widely dispersed across the country. Conversion of all of those customers to a VoIP or other facilities-based product would be a monumental and largely uneconomic endeavor. As the Commission is well aware, a key component of any migration from UNE-P to a CLEC's own facilities is an adequate concentration of customers in a particular central office. While DS-1-level customers can be served via EELs, reducing the need for this concentration somewhat, there is no such option available for serving residences and small businesses. A CLEC must collocate in the ILEC end office serving its customers to gain access to those customers' loops. Z-Tel would have to collocate in thousands of central offices across the country simply to serve our existing customers on a facilities basis. The economics of that alone would dictate that we simply stop serving customers in many of those areas if UNE-P were eliminated. In addition, because of our geographically dispersed and largely residential base, it is difficult to find competitive sources of transport. The high cost of ILEC transport in these areas (particularly if the ILECs were not required to provide such transport at TELRIC rates) would further reduce Z-Tel's ability to continue serving its customers in the absence of UNE-P.

Z-Tel has a relatively high concentration of customers in a few central offices in New York, and accordingly has begun the process of collocating in those offices to deploy a facilities-based service. This will be Z-Tel's first facilities-based offering of service at the DS-0 level, and will be limited to customers served out of the central offices in which Z-Tel has collocated. As Z-Tel develops a critical mass of customers in other offices or is able to economically expand around the current deployment, we will offer facilities-based DS-0 level service in additional areas. However, in most regions of the country Z-Tel's primary acquisition strategy for DS-0 level customers will continue to be UNE-P in the near term. Indeed, just last week Z-Tel announced an agreement with Qwest Corporation to purchase Qwest's UNE-P replacement product, Qwest Platform Plus, through July 2008. We have negotiated with the other RBOCs in an attempt to secure a similar arrangement, but unfortunately have not been successful to date.

Z-Tel's position has consistently been that it would deploy facilities when and where it made sense to do so. Z-Tel has now begun that effort in Tampa and Atlanta, and will soon expand that larger business offering to new cities. However, Z-Tel continues to rely on UNE-P to serve new and existing customers, and has by no means abandoned this strategy or acceded to the removal of UNE-P as an ILEC offering. Z-Tel is continuing to actively market UNE-P-based service, and adds new customers to its installed base daily.

Sincerely,



Horace J. Davis III